IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4716 OF 1990

Nageshwar Deo Deosthan Trust
through its Vahivatdar & Trustee
Shri Govind Shankar Kulkarni,
(deceased) through his heir and
trustee of Nageshwar Deo Deosthan
Trust - Shri Vinayak Govind
Kulkarni, residing at Patas,
Taluka : Daund Dist. Pune and
569, Narayan Peth,
Pune - 30. ..Petitioners

Vs.

1. Namdeo Gopalrao Wable (deceased)
through his heirs and representatives
1A. Smt.Chandrabhaga Namdeo Wable ..

1-B Sitaram Namdeo Wabale (deceased)
through his legal heirs
1-B (i) Smt.Ranjana Alias Rajani
Sitaram Wabale (Wife) ..
1-B (ii) Kum.Asha Sitaram Wabale
(Daughter) ..
1-B (iii) Shri Anand Sitaram Wabale
(son) All are residing at and Post
Patas. Tal. Daund. Dist. Pune ..
1-B (iv) Smt.Jayprabha Ravindra
Phadtare (Married Daughter)
Kum. Jayprabha Sitaram Wabale
Res. at Tal.Baramati Dist. Pune ..
1-B (v) Smt.Rajashree Baburao Gawali
(Married Daughter) Kum.Rajashree
Sitaram Wabale, res. at Gavalyachi
Undwadi, Tal.Baramati Dist.Pune ..

1-C Sahebrao Namdeo Wable ..

1-D Manik Namdeo Wable (deceased)
through his heirs & legal
representatives
1(D-1) Smt.Bebi Manikrao Wable (wife) ..
1(D-2) Vinod Manikrao Wable (son) ..
1(D-3) Rupali Manikrao Wable(daughter)..
All residing at Patas, Tal. Daund
Dist. Pune ..

1-E Dilip Namdeo Wable ..
1-F Vinayak Namdeo Wable (deceased)
through his heirs
1F (i) Shalan Vinayak Wable ..
(ii) Vaibhav Vinayak Wable ..
(iv) Manoj Vinayak Wable ..
all residing at & Post Patas,
Tal.Daund, Dist.Pune 1F(ii) and (iv)
minors through Mother Shalan V.Wable ..

1G. Sou.Subdhara Ramchandra Shitole
R/o At & Post Patas, Tal.Daund
Dist. Daund ..

1H. Sou.Malan Vasant Waghule
R/o Delawadi, Dist.Pune ..
1I. Sou.Suman Bhalchandra More
R/o.Patas, Tal.Daund, Dist.Pune ..

2. Ramchandra Gopalrao Wable ..

3. Narayan Gopalrao Wable ..

4. Maruti Gopalrao Wable

All Residing at Patas, Tal.Daund
Dist. Pune ..Respondents

Mr.Prafulla Shah for the petitioners.

Mr.S.G.Rege for the respondents.

CORAM : D.B.BHOSALE, J.

DATED : 29TH SEPTEMBER, 2004

P.C.:

1. By means of this petition under Article 227 of the Constitution, the petitioner-landlord has taken exception to the judgment and order dated 9.7.1990 rendered by the Maharashtra Revenue

Tribunal (for short "MRT") in Revision Application No.MRT/P/X/2/89/(TNC.B. 260/89) filed by the respondent-tenant, by which the revision has been allowed and they have been declared protected tenants.

2. One Gitabai Shankar Kulkarni in her capacity as a trustee of a trust by name Shri Nageshrao Deo, Patas, Abshishak Anusthan Trust had filed a suit for possession of the field Survey Nos.249 and 544 of village Patas, Taluka Daund, District Pune, against the original tenant Gopala Genu Wabale, who died during the pendency of this petition and is now being represented by the respondents (for short ‘the tenant’). In that suit the defendant had claimed that he was a tenant since 1957-58. An issue of tenancy was, therefore, framed and referred to the Tahsildar by the Civil Court under section 85-A of the Bombay Tenancy Act, 1948 (for short "the Act of 1948"). The following issue was also referred to the Tenancy Authorities: "Whether the defendant proves that he deemed to have purchased the suit lands on 1.4.1957".

2.1 The Tahsildar answered the issues in favour of the tenant. In the appeal, the Addl.

Collector, Pune confirmed the order of the Mamlatdar. The matter was further carried by the petitioner in revision to the MRT. The learned Member of the Tribunal also confirmed the order of the Additional Collector. The matter was further carried to this court by way of Special Civil Application No.979 of 1971. This court allowed the application setting aside the concurrent findings recorded by the three authorities below holding that the original tenant - Gopala had failed to prove that he was a tenant in the suit field as claimed by him. Since the first issue was answered against the tenant, the second issue was also answered in negative. The tenant thereafter carried the matter further to the Supreme Court in Civil Appeal No.1080 of 1976. The Supreme Court by its judgment and order dated 12.1.1978 confirmed the judgment and order of this court dated 23.9.1975 rendered in Special Civil Application No.979 of 1971. The issue of tenancy, thus, stood finally adjudicated upon in the earlier round of litigation. In pursuance of the findings on the issues referred to under section 85-A of the Act, the Civil Suit proceeded further in which the petitioner-landlady ultimately succeeded and got possession of the lands on 7.10.1980.

2.2 The respondents-tenants thereafter on 15.2.1988 initiated fresh round by making application under section 70(b) of the Act of 1948 seeking declaration that he was a protected tenant in the suit lands. The ALT and thereafter Sub-Divisionl Officer dismissed the contentions urged by the tenant by their orders dated 28.3.1989 and 7.9.1989. The matter was further carried by the tenant in revision before the MRT in which the tribunal reversed the concurrent findings recorded by the authorities below and held that the respondents were protected tenants of the suit lands.

3. I perused the judgment and order of the Maharashtra Revenue Tribunal. The tribunal, mainly, on the basis of the entries in the revenue record declared the respondents as "protected tenant" under the provisions of the Bombay Tenancy Act, 1939 (for short ‘Act of 1939’). It has observed that the entries in the record of rights show that the respondent-tenant was a protected tenant and that the landlord did not apply prior to 8.11.1947 as contemplated under section 3A of the

Act of 1939 seeking declaration that Gopala was not protected tenant. The MRT, while making such observations and disturbing the concurrent findings of the Authorities below has completely overlooked the judgment of this court and the Apex Court in the earlier round of litigation. As a matter of fact, this court in the judgment and order dated 23.9.1975 in Special Civil Application No.979 of 1971 in paragraph 4 thereof had categorically recorded that revenue record in the form of record of rights show that the entry showing Gopala as protected tenant was deleted by the Mamlatdar on 20th June, 1955. This entry was certified and that certification was made after notice to Gopala. This correction had been carried out on the basis of an order of the Prant Officer dated 6.11.1950. This clearly indicates that the name of Gopala was deleted as protected tenant after following the mandate of the provisions of section 3-A of the Act of 1939. Section 3-A of the Act of 1939 clearly provides that every tenant shall, from 8.11.1947 be deemed to be a protected tenant for the purpose of this Act and his rights as such protected tenant shall be recorded in the Record of Rights, unless his landlord has prior to the aforesaid date made an application to the Mamlatdar for a declaration

that the tenant is not a protected tenant. The explanation appended to section 3-A provides that a person shall not be deemed to be a protected tenant if such person has been or an application made by the owner of the land as provided in section 3-A of the Act of 1939, declared by a Competent Authority not to be a Protected Tenant. This Court in the judgment dated 23.9.1975, passed in Special Civil Application No.979/1971 had clearly recorded that such order was passed by the Prant Officer on 6.11.1950 declaring that the tenant was not a protected tenant. The Tribunal, therefore, committed grave error of law and fact and disturbed the concurrent findings recorded by the Authorities below. Moreover, the tenant who, in the earlier round of litigation, claiming to be a tenant on 1.4.1957, was held to be a sub-tenant. He thereafter started second round claiming to be a protected tenant. The litigant cannot be permitted to raise such an issue in the second round if such an issue under the very Act has been decided in an earlier proceedings.

3.1 In the instant case an issue of tenancy was finally adjudicated in the earlier round of

litigation and after more than eight years of losing possession a fresh round of litigation was initiated by the respondents claiming to be a protected tenant in the suit lands which cannot be permitted. In the circumstances this petition is allowed. The judgment and order dated 9.7.1990

passed by the Maharashtra Revenue Tribunal, Pune is quashed and set aside.

. Rule is made absolute in the aforesaid terms. No costs.

(D.B.Bhosale, J.)